

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3226 of 1997

with

Civil Application No. 8815 of 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DGP & IGP OF SRP GROUP NO.5

Versus

DALAJIBHAI VELJIBHAI PATELIYA

Appearance:

MR DARSHAN M PARIKH for appellants.

MR SANJAY M AMIN for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 28/04/98

ORAL JUDGEMENT(Per A.M. Kapadia, J.)

Admit. Service of notice is waived by learned advocate Mr. Sanjay Amin for the respondent. At the request of the learned advocates for the parties, the matter is taken up for final hearing.

In this appeal, the appellants/ original opponents have brought in challenge the legality, validity and propriety of the judgment and award dated 8.5.1997 recorded in MACP No. 1620 of 1993 by the MACT (Aux.), Panchmahals at Godhra, whereby a total compensation of Rs.3,24,734 came to be awarded to the respondent herein/ original claimant for the injuries sustained by him in a vehicular accident which took place on 30.6.1993 when he was performing his duties as conductor on the truck No. GRY 4341 driven by the driver in a rash and negligent manner. Whether, the amount awarded by the Tribunal to the tune of Rs.3,24,734 under various recognized heads, including mental pain, shock and sufferings and also future economic loss to the claimant, whose right hand below elbow came to be amputated, is just, reasonable and fair or whether it is excessive and exorbitant which requires to be reduced or not, is the only question which requires our consideration and adjudication, in this appeal.

The respondent herein/ original claimant filed the claim petition claiming compensation of Rs.9,00,000 under different heads. According to the claimant, as a result of the amputation of the hand, he has suffered permanent partial disablement and his future prospects have been marred though he is still in service. At the relevant time he was serving as an armed police constable and because of the injuries he has been put to the lighter job as a gardener. Therefore, future prospects in service is adversely affected due to the accident and resultant amputation of hand.

The Tribunal, after recording evidence and considering the documents produced before it, came to the conclusion that at the relevant time respondent was serving as an armed police constable and because of the amputation of the hand now he has been allotted work of a gardener. However, looking to the nature of injuries and the factual situation, had he not met with the accident, in future he would have been promoted, and therefore, it was held by the Tribunal that he is entitled to compensation under the head of future economic loss also though he is still in service and getting enhanced salary.

The Tribunal has awarded compensation under following heads:

- Rs. 2,600 under the head of attendant charges during treatment.
- Rs. 8,100 under the head of special diet.
- Rs. 1,800 under the head of transportation charges.

Rs. 26,234 actual loss of income.
Rs. 1,000 medical expenses.
Rs.2,16,000 under the head of loss of future income.
Rs. 40,000 mental pain, shock and sufferings.
Rs. 9,000 under the head of nursing and attendant
charges for 9 months.
Rs. 20,000 under the head of amenity of life

Rs.3,24,734 Total

The only controversy raised before us is with regard to the quantification of the damages under the head of future economic loss, which, according to learned advocate Mr. Parikh for the appellants, is on higher side. The Appellate Court, ordinarily, would be loath to interfere with the discretionary powers exercised by the Tribunal, based upon the correct assessment and acceptable appraisal of the evidence so as to determine just and reasonable amount of compensation. However, in the instant case, we find some force in the submission advanced by learned advocate Mr. Parikh and we have also noticed that the Tribunal has considered the disability on higher side and considering the enhanced salary, determined the compensation under the head of future economic loss, which, in our opinion, is on higher side, requiring reduction so as to arrive at a just and reasonable amount of compensation, which is the underlying purpose of the provisions of Section 166 of the Motor Vehicles Act, 1988 ('the Act' for short hereinafter).

After having seen the documentary evidence, copies whereof came to be supplied to us during the course of submission and after considering the rival contentions raised before us, in our opinion, the ends of justice will be satisfied if the amount of Rs.2,16,000 awarded under the head of future economic loss is reduced by Rs.50,000 so as to arrive at a just and reasonable amount of compensation. Under the circumstances, the awarded amount of Rs.3,24,734 is required to be reduced by Rs.50,000 and accordingly it is reduced. Thus, now the respondent/ original claimant is entitled to an amount of Rs.2,74,734, which is rounded off to Rs.2,75,000, instead of Rs.3,24,734 as awarded by the Tribunal. We are satisfied that the amount of Rs.2,75,000 would be just, reasonable and proper amount of compensation and hence we award compensation of Rs.2,75,000 in all to the respondent herein/ original claimant instead of Rs.3,24,734 as awarded by the Tribunal.

Other directions given by the Tribunal, relating to the

interest, disbursement and investment are concerned, as we do not find any infirmity, remain the same and we do not disturb the same.

The appellant - insurance company is directed to deposit the amount of the modified award before the concerned Tribunal within a period of four weeks hereof. The amount of Rs.25,000 deposited before this Court along with the appeal is ordered to be transmitted to the concerned Tribunal forthwith.

In the premise, the appeal succeeds in part. Award is modified to the aforesaid extent. Modified award to be drawn up. There shall be no order as to costs of this appeal.

No order on the civil application.